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Utility uses homeland security law to keep data secret (The Reporters Committee for Freedom of the Press)

The federal Department of Homeland Security has designated a New Jersey town's electronic mapping data to be "critical infrastructure information" protected from public disclosure

July 12, 2005 -- (The Reporters Committee for Freedom of the Press) -- The governing body of a New Jersey municipal utility has circumvented an open records request for electronic mapping data by submitting the data as secret "critical infrastructure information" to the U.S. Department of Homeland Security. The department approved the utility's submission as CII in a June 5 letter.

By so designating the geographic information system data, the Brick Township Municipal Utilities Authority may withhold the information from the public, including New Jersey resident R. Bradley Tombs who requested it in 2003. The authority's original mission was ensuring the operation of the city's water and sewer systems and to bill customers. In the early 1990's, the agency also assumed control of the township's electronic mapping system which manages land parcels for property tax purposes.

Though willing to release paper copies of its maps for \$5 apiece, the agency refused to provide electronic access to them. When confronted with Tombs' open records request, the utility voluntarily submitted the data to federal homeland security officials, and petitioned for and won its designation as protected information under the Critical Infrastructure Information Act of 2002.

Although the Homeland Security Department defines CII, it allows submitters to use their discretion in determining what qualifies. DHS defines CII as information relating to the security of critical infrastructure -- systems and assets so vital to the nation's well-being that their incapacity or destruction could jeopardize security, public health or safety.

The CII Act protects voluntary submissions of CII from freedom of information disclosure so long as the information is not customarily in the public domain. Kevin Donald, the municipal authority's executive director, said in an affidavit attached to the submission to the Homeland Security Department that the "totality of the [Brick Township] GIS database, in a digital format, is information that is not customarily in the public domain."

Tombs disagrees with that representation and said he believes that the GIS information's status as a public record means that it is in the public domain. The municipal authority "doesn't have the authority to make a determination if it's a public record," he said. "If it's a public record then it's in the public domain," he said, adding that "the fact that they offered

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all the same information in paper form also proves that it's in the public domain."

"Now the question is whether or not the Department of Homeland Security will actually have a backbone and investigate" the veracity of the agency's assertions, he added. "I've asked what the appeals process is, and there is none," he said.

Steven Aftergood, project director at the Federation of American Scientists, noted that CII confidentiality is meant to encourage the voluntary submission of infrastructure security plans to the Homeland Security Department, especially by private industry. He added that the agency "seems to be using this statute as a tactic to evade open government laws more than as a way to support security."

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